

Memorandum

To: Consumer Protection Committee

Date: April 17, 2006

From: Rosanna Webb-Flores
Lead Enforcement Analyst

Telephone: (916) 574-7864
Extension:

Subject: **Agenda Item IX – Review Enforcement Authority Available to the Board for Urgent/Emergent Cases**

Background

The Board has an active enforcement program designed to ensure that laws governing its licensee population are enforced in a fair and judicious manner. As indicated in the Board's 2004 Sunset Review Report, 123 cases were referred to the Attorney General's Office for disciplinary action during fiscal year 2000/01 through fiscal year 2003/04. However, in those four fiscal years it took an average of 209 days from the date formal charges were filed (Accusation) to reach final disposition of a disciplinary case. Allegations of psychological or physical impairment require immediate action, as do high profile arrests. In cases in which the licensee poses significant harm to self or others and necessitates a more timely suspension of the license, the enforcement program has utilized two resources, Interim Suspension Orders (ISO) and Penal Code Section 23 Orders (PC 23).

Definitions

Penal Code Section 23 Order

In any criminal proceeding against a person who has been issued a license to engage in a business or profession by a state agency pursuant to provisions of the Business and Professions Code or the Education Code, or the Chiropractic Initiative Act, the state agency which issued the license may voluntarily appear to furnish pertinent information, make recommendations regarding specific conditions of probation, or provide any other assistance necessary to promote the interests of justice and protect the interests of the public, or may be ordered by the court to do so, if the crime charged is substantially related to the qualifications, functions, or duties of a licensee. For purposes of this section, the term "license" shall include a permit or a certificate issued by a state agency. For purposes of this section, the term "state agency" shall include any state board, commission, bureau, or division created pursuant to the provisions of the Business and Professions Code, the Education Code, or the Chiropractic Initiative Act to license and regulate individuals who engage in certain businesses and professions.

Interim Suspension Order

Pursuant to the California Administrative Procedure Act, Section 11529, the administrative law judge of the Medical Quality Hearing Panel established pursuant to Section 11371 may issue an interim order suspending a license, or imposing drug testing, continuing education, supervision of procedures, or other license restrictions. Interim orders may be issued only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act or the appropriate practice act governing each allied health profession, or is unable to practice safely due to a mental or

physical condition, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare.

Temporary Restraining Order

A temporary restraining order (TRO) is a procedural device which State agencies can seek to prevent violations of the law or to suspend a license before formal disciplinary action is taken. It is also used to preserve the status quo or prevent the occurrence of irreparable injury pending further judicial or administrative proceedings. Such an order can only be issued by a court. Except in very severe emergency situations, the agency must give the licensee notice in order that he or she can be heard by the court. As defined in Business and Professions Code section 803.1(a).

A key element is granting a TRO is defined in Code of Civil Procedure section 527(1) It appears from facts shown by affidavit or by the verified complaint that great or irreparable injury will result to the applicant before the matter can be heard on notice.

Discussion

Compliance Actions					
	FY 2001/02	FY 2002/03	FY 2003/04	FY 2004/05	FY 2005/06
ISO Issued	0	0	1	0	1
PC 23 Issued	2	2	1	1	1
TRO Issued	0	0	0	0	0

Interim Suspension orders have been used in those cases in which the licensee is subject to discipline pursuant to sections 820 and 822 of the Business and Professions Code, by reason of a physical and/or mental illness affecting the licensee's competency to practice. In the past five fiscal years the Board has issued Interim Suspension Orders in two cases. In both cases, the licensees were ordered to undergo psychological evaluations. One case involved an impaired marriage and family therapist who was also licensed as a psychologist. He was diagnosed with alcohol dependence with physiological dependence. The second case involved a marriage and family therapist previously placed on five years' probation for incompetence, gross negligence and causing harm to a client. While on probation, the Board ordered supervisor and therapist notified the Board with concerns regarding the licensee's impaired grasp of reality. The licensee was subsequently diagnosed as suffering from Delusional Disorder, Persecutory Type and Narcissistic Personality Disorder. The respondents in both cases voluntarily surrendered their licenses.

A PC 23 is used in those cases in which the licensee has been arrested for an egregious crime substantially related to the license and in the interest of justice and protection of the public the licensee or registrant must be immediately prohibited from practicing. PC 23 orders have been issued in seven cases in the last five fiscal years. The charges or convictions included lewd and lascivious acts upon four minor boys, voluntary manslaughter, stalking, and sexual battery by restraint. Two cases are currently pending, an associate clinical social worker convicted of lewd act upon a child, and a marriage and family therapist convicted of 51 felony charges including committing lewd acts upon a child, aggravated sexual assault of a child and posing a minor for pictures involving sexual conduct. The closed cases resulted in revocation.

The Board as not had an occasion to seek a TRO injunction; however, if a case presents itself where a TRO is necessary, the Board would seek this procedural device.

Process Overview

Interim Suspension Orders are usually requested when the results of a psychological and/or physical evaluation determine the licensee is unsafe or unfit to practice. The assigned Deputy Attorney General presents a request for an interim suspension order during a hearing conducted before an administrative law judge. In all cases where an interim order is issued, an accusation must be filed and served within 15 days of the date in which the parties to the hearing on the interim order have submitted the matter; otherwise the order will be dissolved.

The Board becomes aware of arrests through the media, the public, or Subsequent Arrest Notifications from the Department of Justice. After gathering the pertinent criminal case information, Board staff advises the Deputy Attorney General to appear at the criminal case arraignment to request a PC 23 order. The order usually suspends the practice of the licensee pending the resolution of the criminal matter or any subsequently filed disciplinary action, whichever occurs first.

Attachments

1. Sample PC 23 Request and Order
2. Sample ISO

Attachment 1

Sample PC 23 Request and Order

BILL LOCKYER, Attorney General
of the State of California
MARC D. GREENBAUM
Deputy Attorney General, State Bar No. 138213
Department of Justice
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Los Angeles, California 90013
Telephone: (213) 897-2579

Attorneys for Board of Behavioral Sciences
State of California, Department of Consumer Affairs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

v.

SCOTT PLEUNE,

Defendant.

Case No. YA05913701

**RECOMMENDATION AND
REQUEST BY STATE LICENSING
AGENCY FOR ORDER
PROHIBITING DEFENDANT FROM
PRACTICING AS AN ASSOCIATE
CLINICAL SOCIAL WORKER
PENDING CRIMINAL OR
ADMINISTRATIVE PROCEEDINGS;
[PROPOSED] ORDER**

[Penal Code, § 23]

Date: August 11, 2004
Time: 8:30 a.m.
Division: 5

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that on August 11, 2004, at 8:30 a.m., or as soon
thereafter as the matter may be heard in Division 5 of the above-entitled court, located at One
Regent Street, Inglewood, California, Attorney General Bill Lockyer and Deputy Attorney
General Marc D. Greenbaum, on behalf of Denise E. Johnson, in her official capacity as the

1 Interim Executive Officer of the Board of Behavioral Sciences (hereinafter, the "Board"), hereby
2 recommend and request an Order, as a condition of own recognizance release (O.R.) or bail,
3 prohibiting Defendant Scott Matthew Pleune (hereinafter "Defendant") from practicing as an
4 Associate Clinical Social Worker. Such Order is requested for protection of the public health,
5 safety and welfare.

6 This request is based upon the authorities of the attached Memorandum of Points
7 and Authorities, the criminal complaint, and [Proposed] Order and such oral and documentary
8 evidence as may be presented at the time of hearing on this recommendation and request.

9 DATED: August 9, 2004

10 Respectfully submitted,

11 BILL LOCKYER, Attorney General
12 of the State of California

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14 Marc D. Greenbaum
15 Deputy Attorney General

16 Attorneys for State Agency
17 Board of Behavioral Sciences

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 INTRODUCTION

3 Defendant is licensed by the Board to practice as an Associate Clinical Social
4 Worker in the State of California. On October 6, 1997, the Board issued Scott Matthew Pleune
5 Registration number ASW 16088. Said license is in full force and effect and will expire on
6 September 30, 2004 unless renewed. (See License Certification, attached as Exhibit "A".)

7 The Defendant is charged with violating Penal Code Section 288(A) by committing
8 lewd/lascivious acts with a child under the age of 14.

9 While there are administrative procedures available to the Board to prohibit a
10 licensee's practice (see Bus. & Prof. Code, section 494), such procedures are time-consuming
11 and require additional investigative work and expenditure of limited resources by the Board.
12 Until there is a conviction, the interim procedures available to the Board require proof of the
13 alleged acts constituting the basis of discipline through declarations and documentary evidence.
14 Any additional delay in restricting Defendant in licensed activities, provides him with the
15 "license" and ability to continue his alleged criminal practices, thereby unnecessarily exposing
16 the public to continued harm.

17 This court has the ability to promptly protect the public and prevent further
18 commission of similar crimes as those charged in the criminal complaint by ordering, as a
19 reasonably-related condition of O.R. or bail, that Defendant be prohibited from practicing as an
20 associate clinical social worker, either directly or indirectly, pending outcome of the criminal
21 case or the disciplinary action initiated by the Board.

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1 ARGUMENT

2 I

3 **A STATE LICENSING AGENCY MAY VOLUNTARILY APPEAR**
4 **IN ANY CRIMINAL PROCEEDING OF A LICENSEE TO MAKE**
5 **RECOMMENDATIONS FOR CONDITIONS OF O.R. OR BAIL OR TO**
6 **PROVIDE ASSISTANCE TO THE COURT TO PROMOTE THE**
7 **INTERESTS OF JUSTICE AND PUBLIC PROTECTION**

8 A state licensing agency is authorized by the Legislature, as codified in Penal
9 Code section 23, to voluntarily appear and make recommendations regarding specific conditions
10 of own recognizance release (O.R.) or bail, including recommended bail or sentencing orders
11 prohibiting the licensee from engaging in the activities regulated by the state licensing agency.

12 Penal Code section 23 provides, in part:

13 In any criminal proceeding against a person who has been issued a license to
14 engage in a business or profession by the state agency . . . the state agency which issued
15 the license may voluntarily appear to furnish pertinent information, make
16 recommendations regarding specific conditions of probation, or provide assistance
17 necessary to promote the interests of justice and protect the interests of the public.

18 Penal Code section 23 is a liberally-designed statute adopted by the Legislature to
19 allow state licensing agencies to join with local law enforcement agencies in criminal
20 proceedings for prompt public protection by seeking restrictions of the license pending final
21 resolution of the criminal or administrative proceedings.

22 Typically, a state agency disciplinary action may take months to resolve. Several
23 months may be spent investigating, pleading, calendaring, hearing and reviewing the
24 administrative adjudication. The additional time it takes to resolve such action by the Board
25 exposes the public to continued harm by the licensee. Such threat of continued harm to the
26 public can be avoided by imposing the requested conditions, as a condition of O.R. release or
27 bail, that Defendant not be allowed to practice as an associate clinical social worker pending
resolution of the criminal case or disciplinary action initiated by the Board.

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1 II

2 THE COURT MAY IMPOSE AN ORDER AS A CONDITION OF
3 O.R. OR BAIL PROHIBITING A DEFENDANT FROM ENGAGING
4 IN ANY VOCATIONAL OR PROFESSIONAL OCCUPATION

5 The court or magistrate in a criminal proceeding has broad discretion to impose,
6 as a condition of O.R. release or bail, an order prohibiting a person from engaging in any
7 occupational, vocational, or professional activity, whether or not regulated by state licensing
8 agencies, if it reasonably relates to the crime for which he or she was charged or convicted, or
9 seeks to prevent commission of additional crimes similar to those charged against the defendant
10 in furtherance of public protection. Such pretrial and post-conviction conditions further the
11 policy of protecting the public health, safety and welfare at various stages of a criminal
12 proceeding. *In re York* (1995) 9 Cal.4th 1133, 1141-45; *People v. Keefer* (1973) 35 Cal.App.3d
13 156, 168-69; *People v. Frank* (1949) 94 Cal.App.2d 740, 741-42.

14 In *York*, the California Supreme Court held that a trial court could validly impose
15 as a condition of O.R. release of defendants charged with crimes related to controlled substances,
16 pretrial conditions requiring submission to random drug or alcohol testing and warrantless
17 searches and seizures, during the pendency of release. The Supreme Court noted that such
18 conditions "clearly relate to the prevention and detection of further crime and thus to the safety of
19 the public." *In re York, supra*, at p. 1145. Similarly, as to considerations for setting, reducing or
20 denying bail, the court or magistrate must not only consider the protection of the public, but, in
21 fact, the "public safety shall be the primary consideration." (Penal Code section 1275(a).)

22 In *Keefer*, the defendant had been engaged in the business of residential sales of
23 furnaces and heaters. The defendant was charged and convicted of two counts of grand theft and
24 one count of attempted grand theft based on false pretenses and fraudulent statements to
25 consumers. The trial court sentenced the defendant to probation and imposed a condition that the
26 defendant not engage in the furnace or heating business, either directly or indirectly. *People v.*
27 *Keefer, supra*, 35 Cal.App.3d at pp. 161-62.

The court in *Keefer* found the probation condition constitutionally valid and

1 reasonable under the circumstances where the crimes for which a defendant was found guilty
2 occurred in the course of his business by misrepresenting facts to his customers for the purposes
3 of material gain. *Id.* at pp. 168-69. The court stated:

4 The condition complained of appears reasonably related to the crime of which he
5 stands convicted, and aimed at deterring further criminal activity in an effort to foster
6 rehabilitation and to protect public safety. [Citation omitted]. It is, under the
circumstances, a reasonable condition. (Pen. Code § 1203.1; *Id.* at
p. 169.)

7 In *People v. Frank*, the court addressed the issue of probationary conditions in the
8 criminal prosecution of a licensed pediatrician for committing a lewd and lascivious act upon a
9 ten-year-old female patient. The defendant doctor pled guilty and was placed on five years
10 probation on the condition that he serve nine months in county jail and that he not practice
11 medicine during the entire five-year probationary period. The defendant appealed and challenged
12 the condition prohibiting him from the practice of medicine while on probation, contending it
13 was unreasonable and beyond the authority of the court. The *Frank* court affirmed the condition
14 finding that, under the circumstances, the sentencing court had not abused its discretion. *Id.* at
15 pp. 741-42.

16 17 III

18 A REQUEST FOR A PRETRIAL O.R. OR BAIL CONDITION 19 PROHIBITING A NURSE'S PRACTICE PENDING CRIMINAL 20 OR ADMINISTRATIVE PROCEEDINGS IS CONSISTENT WITH THE BOARD'S PUBLIC PROTECTION RESPONSIBILITIES

21 A condition prohibiting practice as a registered nurse as a condition of O.R.
22 release or bail, pending the resolution of the criminal proceedings or disciplinary proceedings
23 against Board licensees, such as Defendant, is consistent with the public protection
24 responsibilities of the Board. *See* Bus. & Prof. Code, § 4990.125 [Protection of the public shall
25 be the highest priority for the Board of Behavioral Sciences in exercising its licensing, regulatory,
26 and disciplinary functions. Whenever the protection of the public is inconsistent with other
27 interests sought to be promoted, the protection of the public shall be paramount].

1 The Board serves the public by protecting the health, safety and welfare of
2 Californians by advocating a high quality of professionalism, integrity and honesty on the part of
3 Board licensees. Social workers have a substantial responsibility in caring for their patients and
4 occupy a significant place in the spectrum of health care providers.

5 In *Vermont & 110th Medical Arts Pharmacy v. Board of Pharmacy*, the
6 court, in upholding the discipline on a pharmacy, its operator, and three pharmacists employed at
7 the pharmacy, noted:

8 [P]harmacy like the practice of medicine, is a profession . . . society
9 entrusts to persons in these professions the responsibility for control over a force
10 which, when properly used, has great benefit for mankind, but when abused is a
11 force for evil and destruction. It follows that society cannot tolerate the presence
of individuals within these professions who abdicate their professional
responsibility. . . . (*Vermont & 110th Medical Arts Pharmacy v. Board of
Pharmacy* (1981) 125 Cal.App.3d 19, 25.)

12 The acts charged in the Complaint herein, if proven, would fall into the category
13 requiring the most stringent discipline, license revocation.

14 Although the Board has civil and administrative remedies it could seek to
15 immediately enjoin or suspend Defendant from practicing until the Board undertakes disciplinary
16 action, such remedies are cumulative and not exclusive. (*See* Bus. & Prof. Code, §§ 125.5
17 [injunctive relief], 494 [interim suspension order], 4339 [injunctive relief]. Typically, a pretrial
18 Order prohibiting a licensed practice, as a condition of continued release on O.R. or bail in a
19 pending criminal proceeding, is preferred and more effective than civil or administrative interim
20 remedies to prevent the licensee from continuing to violate the law pending final adjudication of
21 any disciplinary action. This is especially true where, as here, Defendant has shown an apparent
22 inability to meet his professional responsibilities.

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1 IV

2 THE 'PRESUMPTION OF INNOCENCE' DOCTRINE APPLIES ONLY
3 AT TRIAL AND MAY NOT BE CONSIDERED IN A PRETRIAL
4 DETERMINATION OF O.R. CONDITIONS OR BAIL

5 " [The presumption of innocence] doctrine has no application to a determination
6 of the rights of a pretrial detainee during confinement before his trial has even begun. (*In re*
7 *York, supra*, 9 Cal. 4th 1133, 1148, quoting *Bell v. Wolfish* (1979) 441 U.S. 520, 533 [60 L.Ed.2d
8 at pp. 464-465], italics added by *York* court.) The Supreme Court in *York* noted that the rule
9 mirrored well-established California law. *York, supra*, citing *Ex parte Duncan* (1879) 53 Cal.
10 410, 411 [no presumption of innocence attaches to a pretrial determination of the amount of bail
11 to be set.]).

12 Consequently, in determining whether this Court should impose a pretrial practice
13 ban condition of O.R. or bail upon Defendant, it should not consider the presumption of
14 innocence applicable only at trial, but rather consider only the issue of whether such condition
15 relates to the prevention or deterrence of further criminal activity, and thus, public safety. *In re*
16 *York, supra*, 9 Cal.4th 1133, 1145, 1147-48.

17 V

18 THERE IS NO PRIOR NOTICE REQUIREMENT FOR AN
19 APPEARANCE AND RECOMMENDATION UNDER PENAL CODE
20 SECTION 23

21 There is no prior notice requirement for an appearance recommendation under
22 Penal Code section 23. *See York, supra*, 9 Cal. 4th 1133. This court has the authority and
23 jurisdiction to, on its own motion, impose conditions of bail or O.R. for public safety purposes.
24 (*See In re York*, 9 cal. 4th 1133, 1141, wherein the court imposed conditions at arraignment in
25 furtherance of public safety.)

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1 **CONCLUSION**

2 For the foregoing reasons, Interim Executive Officer of the Board of Behavioral
3 Sciences, Denise E. Johnson, respectfully requests this court to issue an immediate Order, as a
4 condition of O.R. or bail, prohibiting Defendant Scott Matthew Pleune, registration number
5 ASW 16088 from practicing as an associate clinical social worker pending the outcome of the
6 criminal case or disciplinary action initiated by the Board.

7 DATED: August 10, 2004

8 Respectfully submitted,

9 BILL LOCKYER, Attorney General
10 of the State of California

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12 MARC D. GREENBAUM
13 Deputy Attorney General

14 Attorneys for State Licensing Agency
15 Board of Behavioral Sciences
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Case Name: THE PEOPLE OF THE STATE OF CALIFORNIA v. SCOTT PLEUNE,

Los Angeles Superior Court Case No.: YA05913701

DEFENDANT WILL BE SERVED BY
PERSONAL SERVICE TOMORROW AT
THE HEARING.

Attachment 2

Sample ISO

BILL LOCKYER, Attorney General
of the State of California
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Deputy Attorney General
(BAR # 112278)
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Telephone: (619) 645-2066
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Attorneys for Petitioner

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF BEHAVIORAL SCIENCES
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

Paul Riches, Executive Officer
Board of Behavioral Sciences, Dept.
of Consumer Affairs, State
of California,

Petitioner,

v.

VICKI ELENA PAULAUSKIS, MFT
77564 Country Club Dr., Bldg.B #400A
Palm Desert, CA 92211

Marriage & Family Therapist
License No., MFC 28013,

Respondent.

Case #D1 2002-454

INTERIM ORDER OF
SUSPENSION

(Government Code §494)

Date: Friday, August 12, 2005

Time: 11:00 a.m.

Place: San Diego OAH

The Administrative Law Judge, having received the ex parte Petition of the Executive Officer of the Board of Behavioral Sciences, the accompanying Memorandum of Points and Authorities and supporting declarations, having heard oral argument, and having determined that this is a proper cause for the issuance of an Interim Suspension Order pursuant to Business & Professions Code section 494, orders as follows:

IT IS ORDERED that Marriage and Family Therapist license #MFC 28013, issued to Vicki Elena Paulauskis be suspended and that, as of the date and time of issuance of this order, Vicki Elena Paulauskis cease practice of any nature whatsoever, directly or indirectly, anywhere

1 in the State of California, under her marriage and family therapist license until such time as a full
2 hearing on the petition herein can be had. Such hearing shall be held on 8/30, 2005,
3 commencing at 10:30a.m. at the Office of Administrative Hearings, 1350 Front Street, Room
4 6022, San Diego, California.

5 Dated: August 12, 2005.

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8 Administrative Law Judge
9 Office of Administrative Hearings
State of California

Alex R. Alvard

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Penal Code Section 23

23. In any criminal proceeding against a person who has been issued a license to engage in a business or profession by a state agency pursuant to provisions of the Business and Professions Code or the Education Code, or the Chiropractic Initiative Act, the state agency which issued the license may voluntarily appear to furnish pertinent information, make recommendations regarding specific conditions of probation, or provide any other assistance necessary to promote the interests of justice and protect the interests of the public, or may be ordered by the court to do so, if the crime charged is substantially related to the qualifications, functions, or duties of a licensee.

For purposes of this section, the term "license" shall include a permit or a certificate issued by a state agency.

For purposes of this section, the term "state agency" shall include any state board, commission, bureau, or division created pursuant to the provisions of the Business and Professions Code, the Education Code, or the Chiropractic Initiative Act to license and regulate individuals who engage in certain businesses and professions.

Authority to Seek Interim Suspension Order

494. (a) A board or an administrative law judge sitting alone, as provided in subdivision (h), may, upon petition, issue an interim order suspending any licentiate or imposing license restrictions, including, but not limited to, mandatory biological fluid testing, supervision, or remedial training. The petition shall include affidavits that demonstrate, to the satisfaction of the board, both of the following:

(1) The licentiate has engaged in acts or omissions constituting a violation of this **code** or has been convicted of a crime substantially related to the licensed activity.

(2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.

(b) No interim order provided for in this section shall be issued without notice to the licentiate unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

(c) Except as provided in subdivision (b), the licentiate shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the board in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the licentiate shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice. The licentiate shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the board to provide a hearing within 20 days following the issuance of the interim order without notice, unless the licentiate waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.

(d) At the hearing on the petition for an interim order, the licentiate may:

(1) Be represented by counsel.

(2) Have a record made of the proceedings, copies of which shall

be available to the licentiate upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in Section 11523 of the Government **Code**.

(3) Present affidavits and other documentary evidence.

(4) Present oral argument.

(e) The board, or an administrative law judge sitting alone as provided in subdivision (h), shall issue a decision on the petition for interim order within five business days following submission of the matter. The standard of proof required to obtain an interim order pursuant to this section shall be a preponderance of the evidence standard. If the interim order was previously issued without notice, the board shall determine whether the order shall remain in effect, be dissolved, or modified.

(f) The board shall file an accusation within 15 days of the issuance of an interim order. In the case of an interim order issued without notice, the time shall run from the date of the order issued after the noticed hearing. If the licentiate files a Notice of Defense, the hearing shall be held within 30 days of the agency's receipt of the Notice of Defense. A decision shall be rendered on the accusation no later than 30 days after submission of the matter. Failure to comply with any of the requirements in this subdivision shall dissolve the interim order by operation of law.

(g) Interim orders shall be subject to judicial review pursuant to Section 1094.5 of the **Code** of Civil Procedure and shall be heard only in the superior court in and for the Counties of Sacramento, San Francisco, Los Angeles, or San Diego. The review of an interim order shall be limited to a determination of whether the board abused its discretion in the issuance of the interim order. Abuse of discretion is established if the respondent board has not proceeded in the manner required by law, or if the court determines that the interim order is not supported by substantial evidence in light of the whole record.

(h) The board may, in its sole discretion, delegate the hearing on any petition for an interim order to an administrative law judge in the Office of Administrative Hearings. If the board hears the noticed petition itself, an administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and

advise the board on matters of law. The board shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the petition has been delegated to an administrative law judge, he or she shall sit alone and exercise all of the powers of the board relating to the conduct of the hearing. A decision issued by an administrative law judge sitting alone shall be final when it is filed with the board. If the administrative law judge issues an interim order without notice, he or she shall preside at the noticed hearing, unless unavailable, in which case another administrative law judge may hear the matter. The decision of the administrative law judge sitting alone on the petition for an interim order is final, subject only to judicial review in accordance with subdivision (g).

(i) Failure to comply with an interim order issued pursuant to subdivision (a) or (b) shall constitute a separate cause for disciplinary action against any licentiate, and may be heard at, and as a part of, the noticed hearing provided for in subdivision (f). Allegations of noncompliance with the interim order may be filed at any time prior to the rendering of a decision on the accusation. Violation of the interim order is established upon proof that the licentiate was on notice of the interim order and its terms, and that the order was in effect at the time of the violation. The finding of a violation of an interim order made at the hearing on the accusation shall be reviewed as a part of any review of a final decision of the agency.

If the interim order issued by the agency provides for anything less than a complete suspension of the licentiate from his or her business or profession, and the licentiate violates the interim order prior to the hearing on the accusation provided for in subdivision (f), the agency may, upon notice to the licentiate and proof of violation, modify or expand the interim order.

(j) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section. A certified record of the conviction shall be conclusive evidence of the fact that the conviction occurred. A board may take action under this section notwithstanding the fact that an appeal of the conviction may be taken.

(k) The interim orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law.

(l) In the case of a board, a petition for an interim order may be filed by the executive officer. In the case of a bureau or program, a petition may be filed by the chief or program administrator, as the case may be.

(m) "Board," as used in this section, shall include any agency described in Section 22, and any allied health agency within the jurisdiction of the Medical Board of California. Board shall also include the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. The provisions of this section shall not be applicable to the Medical Board of California, the Board of Podiatric Medicine, or the State Athletic Commission.

**State of California
Board of Behavioral Sciences**

M e m o r a n d u m

To: Consumer Protection Committee

Date: April 7, 2006

From: Mona C. Maggio
Assistant Executive Officer

Telephone: (916) 574-7841

Subject: Agenda Item X - Discuss Future Committee Meeting Agenda Items

At its January 17, 2006 meeting, the Consumer Protection Committee established the following meeting dates and tentative meeting locations:

June 21, 2006 – Sacramento
September 20, 2006 – Southern California
January 10, 2007 – Sacramento

At this time the Committee and audience members may suggest future agenda items for consideration.